

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PAUL PHELPS,

Plaintiff,

v.

MANUEL PEREZ, et al.,

Defendants.

Case No. 1:22-cv-01406-SAB (PC)

ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN A DISTRICT
JUDGE TO THIS ACTION

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
CERTAIN CLAIMS

(ECF No. 7)

Plaintiff Paul Phelps is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On November 8, the Court screened Plaintiff's complaint and found a cognizable excessive force claim against Defendants Townsend and Bettis in violation of the Fourteenth Amendment, a supervisory liability claim against Defendant Manuel Perez in violation of the Fourteenth Amendment, and a Monell liability claim against the County of Madera in violation of the Fourteenth Amendment. (ECF No. 5.) However, Plaintiff failed to state any other cognizable claims for relief. Plaintiff was informed that he could file an amended complaint or a notice of intent to proceed on the claims found to be cognizable. (Id.)

On November 17, 2022, Plaintiff notified the Court of his intent to proceed on the claims found to be cognizable. (ECF No. 7.) Therefore, the Court will recommend that this action proceed only on Plaintiff's excessive force claim against Defendants Townsend and Bettis in

violation of the Fourteenth Amendment, a supervisory liability claim against Defendant Manuel Perez in violation of the Fourteenth Amendment, and a Monell liability claim against the County of Madera in violation of the Fourteenth Amendment. Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

Accordingly, it is HEREBY ORDERED that the Clerk of Court shall randomly assign a District Judge to this action.

Further, it is HEREBY RECOMMENDED that:

1. This action proceed only on Plaintiff's excessive force claim against Defendants Townsend and Bettis in violation of the Fourteenth Amendment, a supervisory liability claim against Defendant Manuel Perez in violation of the Fourteenth Amendment, and a Monell liability claim against the County of Madera in violation of the Fourteenth Amendment.

2. All other claims be dismissed for failure to state a cognizable claim.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: November 18, 2022


UNITED STATES MAGISTRATE JUDGE